

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

MDL NO. 1456

THIS DOCUMENT RELATES TO:

CIVIL ACTION: 01-CV-12257-PBS

BMS SETTLEMENT,  
TRACK TWO SETTLEMENT, AND  
ASTRAZENECA CLASS 2 AND 3  
SETTLEMENT

Judge Patti B. Saris

**CLASS PLAINTIFF'S SECOND STATUS REPORT FOR BMS,  
TRACK TWO AND ASTRAZENECA SETTLEMENTS**

**A. Background**

On November 30, 2010, the Court issued an Order for Final Consideration of the BMS Settlement [Docket No. 7313] and an Order for Final Consideration of the Track Two Settlement [Docket No. 7314] (collectively, the "November Orders.").

Each order set forth a separate schedule for accomplishing direct mail notice to Class 1 consumers, other settlement milestones, and a date for a final approval hearing related to each settlement. The November Orders also directed Class Counsel to provide, beginning on December 17, 2010, monthly status reports "detailing the progress" of both the BMS and Track 2 Settlements. This is the second such report.

**B. Production of Data for the BMS and Track 2 Proposed Settlements is Complete**

CMS and Buccaneer have now completed production of all requested data. On December 13, 2010, CMS's vendor, Buccaneer, provided Class Counsel with data containing the names and addresses of all consumers for whom CMS made a reimbursement associated with one or more

drugs in both the BMS and Track Two settlements. Buccaneer also provided Class Counsel (on December 14, 2010) claims level data for approximately 25% of the total number of individuals identified in the name and address file. This information will be used later in the notice process to calculate claim amounts for each individual who returns a claim card in response to the initial notice identifying themselves as having made out-of-pocket percentage co-payments for one or more of the drugs in the settlements. On December 21, 2010, Buccaneer produced an additional 25% of this claims level data. On December 28, 2010, Buccaneer delivered the remaining 50%, to Class Counsel and thus have produced all requested data.

### **C. BMS Proposed Settlement**

Utilizing the delivered data, Rust Consulting, Inc. ("Rust"), the Court-appointed claims administrator, identified by name 695,910 individuals who are potential members of Class 1 in the BMS Proposed Settlement. In compliance with the Court-approved BMS settlement schedule, the first wave of direct notice to Medicare Class 1 beneficiaries in the BMS settlement was mailed on December 23, 2010, and mailing was completed on December 30, 2010. Recipients of the initial mailing have until January 31, 2011 to return the notice card that accompanied the initial mailing.

### **D. Track Two Proposed Settlement**

Utilizing the name and address file from CMS referenced above, Rust identified by name 19.3 million individuals who are potential members of Class 1 in the Track Two Settlement. The deadline for mailing direct notice for Track 2 is January 31, 2010.

On December 31, 2010, Class Counsel submitted a report to the Court regarding the total expenses associated with notice to Class 1 consumers in the Track Two settlement [Docket No. 7367]. That report suggested alternatives to the currently approved notice program for Track

Two Class 1 consumers and provided the Court with information regarding the expense associated with each alternative. As explained in the December 31, 2010 report, Rust will need direction from class counsel and the Court as to how to proceed. If Rust is to meet the January 31, 2011 deadline for sending direct mail to all potential Track Two Class 1 consumers, Rust must begin printing and mailing notices no later than January 10, 2011 and must receive direction from Class Counsel by January 7, 2010. If no direction is received by the Court by that time, class counsel will direct Rust to proceed with the notice program as originally approved by the Court.

**E. AstraZeneca Class 2/3 Proposed Settlement**

The final hearing on the AstraZeneca Class 2 and Class 3 Proposed Settlements (both Massachusetts and non-Massachusetts) is scheduled for January 21, 2011. On Wednesday, December 15, 2010, Class Counsel filed their papers in support of the settlement, as required under the Court's scheduling order. As of December 31, 2010, Class Counsel had not received any objections to the settlements or notices of appearances from objectors or other class members.

**F. The Next Status Report**

Pursuant to the November Orders, Class Counsel will submit its next regularly-scheduled Status Report on February 1, 2011.

DATED: January 3, 2011

By /s/ Thomas M. Sobol

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**CLASS COUNSEL**

**CERTIFICATE OF SERVICE**

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, **CLASS PLAINTIFF'S SECOND STATUS REPORT CONCERNING RECEIPT OF CMS DATA AND STATUS OF NOTICE TO POTENTIAL CLASS 1 CONSUMERS IN THE BMS AND TRACK TWO SETTLEMENTS**, to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on January 3, 2011, a copy to LexisNexis File & Serve for posting and notification to all parties.

**/s/ Steve W. Berman**

Steve W. Berman